Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For The Period

From July 1, 1962

Through September 30, 1962

VOLUME 108

MACDONALD GALLION, Attorney General

T. O. "Tillie" Walker

QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1962 through September 30, 1962, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superinendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MACDONALD GALLION

Attorney General

MACDONALD GALLION

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OPINIONS

August 31, 1962

Honorable George A. Toulmin
License Commissioner for Mobile County
P. O. Box 91
Mobile, Alabama

Ad Valorem Taxes — Motor Vehicles.

1. The quarterly basis for the assessment of motor vehicles for ad valorem taxes provided for in Act No. 660 of the 1961 Session of the Legislature, approved September 6, 1961 (Acts, 1961, Vol. I, page 822), which further amends Title 51, Section 704, Code of Alabama 1940, applies to only two specific categories of motor vehicles which are designated under subsection (c) of the statute, as amended; first, to motor vehicles brought into the state during the tax year, and second, to "new motor vehicles" for which licenses have never been issued, which are sold in this state from a dealer's stock during the tax year.

2. The ad valorem tax is to be paid on motor vehicles falling within the first category on the basis of the quarter during which such vehicles were brought into the state. With respect to motor vehicles falling within the second category, the ad valorem tax is to be paid on the basis of the quarter during which such "new motor vehicles" are sold from the Alabama dealer's stock.

3. Under subsection (c) of Section 704, as amended, supra, the ad valorem tax on stocks of goods and inventories levied under Title 51, Section 21 (d), Code of Alabama 1940, has been repealed insofar as it relates to a dealer's stock of motor vehicles.

4. Under subsections (a) and (b) of Section 704, as amended, supra, the tax is still to be assessed on all motor vehicles for the preceding year, and is payable on October 1, immediately following the tax year.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of July 18, 1962, is as follows:

"Your official opinion is respectfully requested in relation to a provision of Act No. 660, House Bill No. 669 passed during the

regular session of the Alabama Legislature, 1961, and approved by the Governor on September 6, 1961.

"Do the provisions of said Act No. 660, and more specifically Section 704 (e) thereof, prohibit the assessment and collection of ad valorem taxes on motor vehicles constituting a part of an Alabama motor vehicle dealer's stock on and after October 1, 1961?

"For example, suppose that a motor vehicle dealer who is licensed to do business in this State, brought a motor vehicle, either new or used and on which an ad valorem tax lien had not already attached, into the state of Alabama from another state during the first quarter of the tax year which began October 1, 1961. Also that such dealer held such motor vehicle in his dealer's inventory until he thereafter sold the same to a legal resident of the state of Alabama during the fourth quarter of said tax year which ends on September 30, 1962.

"When the owner of such motor vehicle comes to renew his license on such vehicle on or after October 1, 1962, shall we assess such motor vehicle for ad valorem taxation and the taxes thereon be collected for the last quarter only of the preceding tax year because of the fact that such vehicle was a part of the Alabama dealer's stock and inventory during the first three quarters of such preceding tax year?

"Inasmuch as we are already in the process of preparing assessments on motor vehicles which will be licensed for the coming year, an early official opinion clarifying this subject for us will be very much appreciated."

By Act No. 660 of the 1961 Session of the Alabama Legislature, approved September 6, 1961 (Acts 1961, Vol. I, page 822), Title 51, Section 704 of the Code of Alabama 1940, has been further amended by the Legislature, by changing (among other things) the basis for the payment of ad valorem taxes on motor vehicles where such vehicles are "brought into the state during any tax year" and where "new motor vehicles for which licenses have never been issued" are sold from the stock of an Alabama dealer during any tax year. Moreover, the ad valorem tax on inventories under Title 51, Section 21 (d), Code of Alabama 1940, has under Act No. 660, supra, been repealed insofar as it relates to any dealer's stock of motor vehicles.

Pertinent excerpts from Act No. 660, supra, in this respect are as follows:

"(c) Motor vehicles brought into the state during any tax year, or **new motor vehicles for which licenses have never been issued, sold**

from the stock of a dealer during any tax year, shall be subject to taxation the same as as if they had been held or owned in the state on the first day of October, except that taxes thereon shall be assessed on a quarterly basis as follows:

"(1) Motor vehicles brought into the state or sold from stock after the first day of October, 1961, or of any subsequent year, but before the first day of January following, shall be subject to taxation the same as if held or owned in the state on the first day of October.

"(2) Motor vehicles brought into the state or sold from stock after the last day of December, 1961, or of any subsequent year, but before the first day of April following, shall be subject to taxation for three quarters of the tax year.

"(3) Motor vehicles brought into the state or sold from stock after the last day of March, 1962, or of any subsequent year, but before the first day of July following, shall be subject to tax for one-half of the tax year.

"(4) Motor vehicles brought into the state or sold from stock after the last day of June, 1962, or of any subsequent year, but before the first day of October following, shall be subject to tax for one fourth of the tax year."

* * * *

"(e) After the thirtieth day of September, 1961, motor vehicles shall not be included in any assessment made by any person, firm or corporation under the provisions of section 21 (d) of this title as of the first day of October, 1961, or any subsequent year, and such motor vehicles shall not be considered an escape property by reason of the failure to include the same in any tax return as of the first day of October, 1961, or any subsequent year; all motor vehicles shall be assessed and the taxes thereon shall be collected solely as herein provided." (Emphasis supplied.)

The new graduated or quarterly basis for the purpose of assessment under Subsection (c) of Section 704, as amended, supra, would apply only to two specific categories of motor vehicles, namely, motor vehicles brought into the State during any tax year and "new motor vehicles" sold from an Alabama dealer's stock in this state during any tax year. All other motor vehicles not falling into one of these two categories are still to be assessed on the regular yearly basis.

It is my opinion that Act 660, supra, means that all motor vehicles brought into the State during any tax year are to be assessed, and the tax is to be paid, on the basis of the quarter during which such motor vehicles are brought into the State, except "new motor vehicles"

which are sold from an Alabama dealer's stock of goods. Such "new motor vehicles" are to be assessed, and the tax is to be paid, on the basis of the quarter during which such "new motor vehicles" are sold from the Alabama dealer's stock.

In answer to your specific question, it is my opinion that if the motor vehicle to which you refer is a "new motor vehicle" it should be assessed, and the ad valorem tax paid, on or after October 1, 1962, based on the fourth quarter, the quarter during which it was sold from stock by the Alabama dealer. If the motor vehicle to which you refer is a "used motor vehicle," it should be assessed and ad valorem tax paid on or after October 1, 1962, based on the first quarter, the quarter during which it was brought into the State of Alabama by the Alabama dealer.

It is also well to call to your attention that under Act 660, supra, particularly Subsections (a) and (b) of Section 704, as amended thereby, the tax is still to be colleced for he preceding year on October 1, immediately following the tax year. The tax due in accordance with Act 660, supra, will first be due and payable on or after October 1, 1962, although the tax lien would have attached during the tax year October 1, 1961, through September 30, 1962, depending upon the particular circumstances.

Very truly yours,

MACDONALD GALLION
Attorney General

September 4, 1962

Honorable M. N. Brown
Mayor, City of Enterprise
Enterprise, Alabama

Bonds — Loans — Municipalities — Words and Phrases.

1. A municipal industrial development board may make a loan by giving its promissory note therefor secured by a mortgage covering a project of such board.

2. The terms "bonds" and "notes" are used interchangeably.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of August 27, 1962, is as follows:

"The City of Enterprise, pursuant to **Chapter 17, Title 37, Code of Alabama, 1940,** as amended granted permission certain individuals

here in Enterprise to organize the Industrial Development Board of the City of Enterprise, Alabama, a public corporation, hereinafter referred to as the Development Board. The Development Board filed its Articles of Incorporation, pursuant to such permission granted, on November 21, 1961.

"The Development Board is in the process of completing an industrial building here in Enterprise and has completed negotiations with a Delaware Corporation, with its home office in Maryland, to utilize the building. The Development Board and the new Industry have mutually agreed to a twenty year lease with an option to purchase for a nominal consideration upon the expiration of the lease agreement.

"The Development Board proposes to make an application through the Enterprise Banking Company for a Small Business Administration loan pursuant to **Section 502,** of the **Small Business Investment Act,** wherein, the Bank will participate with SBA in the loan. "Small Business Administration regulations require, in connection with a loan to an investment company, that the investment company execute its note and mortgage. Would you kindly give us your opinion if the Development Board, created pursuant to **Act No. 648** and referred to as the **Cater Act,** can borrow money from Small Business Administration and execute to Small Business Administration, or to a bank which participates with Small Business Administration in a loan, a promissory note and a mortgage to better secure the note.

"The corporate powers of the Development Board are those powers enumerated in **Section 8 of Act No. 648, the Cater Act."**

We have found no case in which either the Supreme Court or the Court of Appeals of Alabama has answered the question presented by your request.

The Industrial Development Board of the City of Enterprise was created under and is controlled by the provisions of Act No. 648, Acts of Alabama 1949, page 991, as amended by Act No. 854, Acts of Alabama 1953, page 1144.

The purpose and legislative intent of Act No. 648, as amended, supra, is expressed in Section 2 of said Act as follows:

"It is the intent of the legislature by the passage of this act to authorize the incorporation in several municipalities in this state of public corporations to acquire, own, lease, and dispose of properties to the end that such corporations may be able to promote industry and develop trade by inducing manufacturing, industrial

and commercial enterprises to locate in this state and further the use of its agricultural products and natural resources, and to vest such corporations with all powers that may be necessary to enable them to accomplish such purposes. It is not intended hereby that any such corporation shall itself be authorized to operate any such manufacturing, industrial or commercial enterprise. This act shall be liberally construed in conformity with the said intention."

Section 8 of Act No. 648, as amended, supra, reads in part as follows:

"The corporation shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated: . . . (4) to acquire, whether by purchase, exchange, gift, lease, or otherwise, and to improve, maintain, equip and furnish one or more projects, including all real and personal properties which the board of directors of the corporation may deem necessary in connection therewith and regardless of whether or not any such projects shall then be in existence; . . . (7) to issue its bonds for the purpose of carrying out any of its powers; (8) as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its projects or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues and receipts therefrom or from any thereof; . . ."

The above-quoted portion of said Section 8, specifically authorizes an industrial development board, created under Act No. 648, as amended, supra, to issue bonds to carry out the powers of such board and to mortgage any of its projects to secure its indebtedness. However, neither the term "note" nor the term "promissory note" appears in any of the provisions of Act No. 648, as amended, supra.

The Supreme Court of Tennessee considered a problem similar to the one presented by your request in the case of **Tennessee Electric Power Company v. Mayor and Aldermen of Town of Fayetteville,** 114 S. W. 2d 811. The opinion of the Court reads in part as follows:

". . . All written obligations have come to be commonly known as bonds, including notes, duebills, or any other evidence of indebtedness. Shields v. Williams, 159 Tenn. 349, 19 S. W. 2d 261. It was not the purpose of the Legislature, as heretofore stated, to limit the indebtedness that might be incurred in establishing these plants, and the word 'bonds' sufficiently embraces any obligation that the municipality may incur."

In the case of **Miller, et al v. Greater Baton Rouge Port Commission,** 225 La. 1095, 74 So. 2d 387, the Court held that the words "bonds" and "notes" have been used interchangeably in the business world and

no distinction exists as a matter of law for the reason that the essence of each is to pay a certain sum to the bearer. See also **Board of County Commissioners of the City and County of Denver v. Home Savings Bank,** 236 U. S. 101, 35 S. Ct. 265, 59 L. Ed. 485 and **Schoonmaker v. Mitchell's Administrator,** 144 Ky. 794, 139 S. W. 968.

Premises considered, I am of the opinion that the provisions of Act No. 648, as amended, supra, authorize the Industrial Development Board of the City of Enterprise to make the loan, here considered, by giving its promissory note therefor, secured by a mortgage covering the project to which your request refers.

Very truly yours,

MACDONALD GALLION
Attorney General

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